



Administrative  
Appeals Tribunal

# AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes information about decisions of interest recently published in the AAT's Migration & Refugee Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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# AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions as well as about select decisions recently published in the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

## Citizenship

[GBSN and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 650 (31 August 2015); Senior Member JF Toohey

General residence requirement – whether Applicant's employment in Australian Consulate overseas equivalent to time spent in Australia – special residence requirement – discretion – decision under review affirmed

## Compensation

[Chowdhury and Linfox Australia Pty Ltd](#) (Compensation) [2015] AATA 657 (31 August 2015); Ms R Perton, Member

Whether shoulder condition arose out of or in the course of employment – whether condition aggravated by employment – right shoulder condition – decision affirmed

[Lenz and Comcare](#) (Compensation) [2015] AATA 659 (31 August 2015); Deputy President G Humphries, Dr P Wilkins, Member

Commonwealth employee – condition of major depressive disorder – incident in East Timor in 2003 – whether incident contributed to a significant degree to Applicant's injury – whether caused by reasonable administrative action – Applicant offered voluntary redundancy – reviewable decision affirmed

[Solomon and Comcare](#) (Compensation) [2015] AATA 648 (28 August 2015); Dr P McDermott RFD, Senior Member

Claim for acute stress condition – serious developmental adversity – whether work related condition – whether incapacity for work – decision under review affirmed

[Heffernan and Comcare](#) (Compensation) [2015] AATA 655 (31 August 2015); Professor R Deutsch, Deputy President

Whether the Applicant can be compensated for the purchase of a car – Applicant's accepted injuries are aggravated by driving – Applicant has previously had his car altered – whether a car can be considered an aid or an appliance – statutory interpretation – the expressio unius rule – decision affirmed

## Education and Research

[HMZP and Secretary, Department of Education](#) [2015] AATA 666 (4 September 2015); Senior Member AC Cotter, Dr M Sullivan, Member

HECS-HELP balance – application for remission of HECS-HELP debt – special circumstances of mental illness and homelessness – decision under review affirmed

## Migration and Refugee

[1405700](#) (Migration) [2015] AATA 3066 (10 July 2015); N Burns, Member

Standard Business Sponsor – s 140M(1)(a) – s 140M(1)(d) – r 2.89 – r 2.78 – r 2.79 – r 2.86 – r 2.90(2) – Cancellation of approval as business sponsor – Review Applicant barred for 18 months from sponsoring for Subclass 457 visas – Variation on delegate's decision – Barred for 18 months for making new applications for approval – Decision under review remitted

[1419649](#) (Migration) [2015] AATA 3241 (3 August 2015); K Millar, Member

Child (Residence) (Class BT) – cl 837.213(a) – cl 837.213(b) – r 1.14(b) – Not an orphan relative of an Australian relative – Decision under review affirmed

[1507603](#) (Migration) [2015] AATA 3243 (7 August 2015); A Dronjic, Member

Cultural/Social (Temporary) (Class TE) – cl 416.222(a) – Approved special program – School language assistants program – Cultural enrichment program – Decision under review remitted

[1409771](#) (Refugee) [2015] AATA 3234 (23 July 2015); J Jolliffe, Member

Protection visa – China – *SZGIZ v MIAC* (2013) 212 FCR 235 – s 36(2)(aa) – Complementary protection provisions – s 91WA – Provision of bogus identity document – Religion – Underground Catholic – Persecution by criminals and police – Decision under review affirmed

[1421400](#) (Refugee) [2015] AATA 3232 (30 July 2015); M Kennedy, Member

Protection visa – Vietnam – s 45AA – r 2.08F – Religion – Catholic – Social Group – Failed asylum seeker – Decision under review set aside and substituted with decision to refuse Temporary Protection (Class XD) visa

[1412533](#) (Refugee) [2015] AATA 3258 (7 August 2015); C Wilson, Member

Protection Visa Cancellation – Sweden – s 107 non-compliance – Incorrect answers in visa and citizenship applications – Third country passport – Decision under review affirmed

## Practice and Procedure

[Grass and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 658 (31 August 2015); Senior Member G Ettinger

Application for extension of time to lodge application for review – cancellation of approval of Australian citizenship following delay resulting from unlawful actions of a delegate of the Minister for Immigration and Citizenship (as he then was) – two year delay between receipt of reviewable decision and application for extension of time – well established principles from well-known cases applied – application refused

Application for reinstatement pursuant to s 42A(10) – withdrawal of application – whether dismissed in error – whether any identifiable error – Tribunal cannot discern error – application refused

[Power and Australian Securities and Investments Commission](#) [2015] AATA 652 (31 August 2015); Deputy President K Bean

Applications for extension of time – Decisions made by ASIC in 2011 to cancel Australian Financial Services licences – Applications for review withdrawn in 2011 – Applications for extension of time prompted by rejection of new application for licence in 2014 – Standing – Where company deregistered – Whether Applicant a person whose interests are affected – Consideration of Hunter Valley principles – Extensions of time granted

## **Social Security**

[Malik and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 649 (31 August 2015); Senior Member N Isenberg

Disability support pension – permanent conditions – whether the Applicant had an impairment rating of 20 points or more under the Impairment Tables – whether the Applicant had a “continuing inability to work” – decision under review affirmed

[Wehbee and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 641 (27 August 2015); Professor R McCallum AO, Member

Disability support pension – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant’s impairment is rated 20 points or more under the Impairment Tables – decision affirmed

[Seears and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 656 (31 August 2015); Dr G Hughes, Member

Lump sum compensation payment – lump sum preclusion period – whether lump sum preclusion period can be reduced due to “special circumstances” – nothing unusual, uncommon or exceptional about Applicant’s circumstances in the context of the legislation – home ownership taken into account – decision under review affirmed

[Brownsey and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 660 (11 August 2015); Senior Member BJ McCabe

Aged pension – asset test – determining rate at which pension is paid – market value – best use to which asset could be put – decision under review affirmed

[Moore and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 669 (4 September 2015); Senior Member N Isenberg

Age pension – whether Applicant was a returning former Australian resident – portability of age pension – whether Applicant was residing in Australia – qualifying Australian residence – the nature of the accommodation used by the person in Australia – nature and extent of the family relationships the person has in Australia – the nature and extent of the person’s employment, business or financial

ties with Australia – the nature and extent of the person’s assets located in Australia – the frequency and duration of the person’s travel outside Australia – decision set aside

[Savicic and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 665 (2 September 2015); Dr I Alexander, Member  
Disability support pension – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant’s impairment is rated 20 points or more under the Impairment Tables – decision affirmed

[Zhang and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 668 (4 September 2015); Ms R Perton, Member

Lump sum compensation – preclusion period – whether special circumstances – tax on weekly payments – costs of litigation – decision set aside

## **Taxation**

[NR Allsop Holdings Pty Ltd as General Partner of Q Uniform Partnership and Commissioner of Taxation](#) (Taxation) [2015] AATA 654 (31 August 2015); Deputy President IR Molloy

Income tax – whether there existed a limited partnership or a corporate limited partnership – whether shares issued were a debt or equity interest – whether deemed dividends arise under Division 7A of the *Income Tax Assessment Act 1936* – objection decisions under review affirmed

Shortfall penalty – whether position taken by taxpayer reasonably arguable – penalty decisions affirmed

[D Marks Partnership and Commissioner of Taxation](#) (Taxation) [2015] AATA 651 (31 August 2015); Deputy President IR Molloy

Income tax – whether a limited partnership or a corporate limited partnership existed – whether shares issued were a debt or equity interest – objection decisions under review affirmed  
Shortfall penalty – whether position taken by taxpayer reasonably arguable – penalty decisions affirmed

[Trustee for the Starbrake Holdings Trust & Guce Holdings Pty Ltd and Commissioner of Taxation](#) (Taxation) [2015] AATA 661 (1 September 2015); Senior Member CR Walsh

Goods and Services Tax – Administrative Penalties – applications for review stayed or held in abeyance pending Federal Court proceedings being determined or otherwise disposed of – Tribunal’s power to stay, or hold in abeyance, applications for review – applications allowed

## **Veterans’ Affairs**

[Connell and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 653 (31 August 2015); Senior Member JF Toohey

Special rate of pension – whether Applicant incapable by reason of accepted conditions alone from undertaking remunerative work of eight or more hours a week – whether Applicant prevented from continuing in remunerative employment by reason of accepted conditions alone – whether Applicant ceased remunerative employment for reasons other than accepted conditions – decision under review affirmed

[Richmond and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 647 (28 August 2015); Deputy President SA Forgie

Remittal – disability pension paid at general rate – application for increase in rate – conditions accepted as war-caused injury – whether veteran by reason of incapacity alone prevented from continuing to undertake remunerative work and so is suffering loss of salary or wages or earnings – veteran satisfied s 24(1)(c) – decision affirmed

[Stevens and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 663 (2 September 2015); Senior Member G Ettinger

Disability pension – Special rate of pension or Intermediate rate – whether the Applicant is prevented from continuing to participate in remunerative work for more than 8 hours a week (Special rate), or 20 hours a week (Intermediate rate), due to his accepted conditions alone – whether loss of salary, wages or earnings suffered – decision under review affirmed – Veteran not eligible for pension at the Special rate or Intermediate rate

[Iliopoulos and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 670 (4 September 2015); Senior Member E Fice

Reasonable hypothesis test – Statement of Principles – no relevant Statement of Principles – chronic irritable cough syndrome – exposure to insecticides – decision under review affirmed

[Walker and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 667 (4 September 2015); Deputy President G Humphries

Application for increase in pension – s 23 of *Veterans' Entitlements Act 1986* – intermediate rate of pension – whether veteran's war-caused incapacity renders him incapable of undertaking remunerative work other than on a part-time basis or intermittently – whether veteran capable of undertaking work for 20 or more hours per week – decision under review affirmed

# Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

## Appeals lodged

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CASE NAME	AAT REFERENCE
<b>Repatriation Commission v Armstrong</b>	<a href="#">[2015] AATA 566</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Lopez-Avila v K &amp; S Freighters Pty Ltd</b>	<a href="#">[2015] AATA 197</a>	<a href="#">[2015] FCA 962</a>

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# Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

## Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They take effect from **21 September 2015**.

### Lipoma (Reasonable Hypothesis) – No. 114 of 2015

<https://www.comlaw.gov.au/Details/F2015L01387>

### Lipoma (Balance of Probabilities) – No. 115 of 2015

<https://www.comlaw.gov.au/Details/F2015L01388>

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